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CONFIRMATION PROCEDURES AND OTHER COMMITTEE-RELATED BUSINESS

HEARING

BEFORE THE

COMMITTEE ON ARMED SERVICES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

NOVEMBER 29, 1988

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CONFIRMATION PROCEDURES AND OTHER COMMITTEE-RELATED BUSINESS

TUESDAY, NOVEMBER 29, 1988

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m., in room SR-222, Russell Senate Office Building, Senator Sam Nunn (chairman) presiding.

Present: Senators Nunn, Exon, Levin, Kennedy, Bingaman, Dixon, Gore, Warner, Thurmond, Gramm, and McCain.

Staff present: Arnold Punaro, staff director; Carl M. Smith, staff director for the minority; Romie L. Brownlee, deputy minority staff director; Andrew S. Effron, general counsel; Patrick A. Tucker, minority counsel; Christine C. Dauth, chief clerk; Marie Fabrizio Dickinson, assistant chief clerk; Gerald K. Bankus, Robert E. Bayer, Robert G. Bell, Robert F. Bott, Jonathan L. Etherton, Richard D. Finn, Jr., Colleen M. Getz, John J. Hamre, William E. Hoehn, Jr., George K. Johnson, Jr., Ronald P. Kelly, James R. Locher III, David S. Lyles, Michael J. McCord, Patricia L. Watson, professional staff members; Barbara Gallo and Mickie Jan Wise, staff assistants.

Also present: Gregory J. Weaver and Linda Gustitus, assistants to Senator Levin; William J. Lynn, assistant to Senator Kennedy; Edward McGaffigan, Jr., assistant to Senator Bingaman; Milton D. Beach and Donald A. Mitchell, assistants to Senator Glenn; Terrence Lynch, assistant to Senator Shelby; Christopher Mellon, assistant to Senator Cohen; Mark J. Albrecht, assistant to Senator Wilson; William J. Wight, Richard J. Ribbentrop, and Dudley Carlson, assistants to Senator Gramm; and Anthony H. Cordesman, assistant to Senator McCain.

OPENING STATEMENT OF SENATOR SAM NUNN, CHAIRMAN

Senator NUNN. The committee will come to order. We are going to try to make this meeting short and sweet this morning. I know everybody on the Democratic side has got a caucus at 10 a.m. We may run over a few minutes beyond 10 a.m., but hopefully not much.

John, what time do you all go in?

Senator WARNER. 10 a.m., but it is fairly short.

Senator NUNN. These are important matters, particularly the whole question of how we handle confirmations, which we are going to have a number of after the first of the year.

Senator Warner and I both have talked about this at length, and we decided to have the meeting this morning to give everybody a chance to be heard and express our views.

During August of this year Senator Warner and I began an examination of the issue of the qualifications standards for civilian appointees in the Department of Defense.

There is a general consensus in the defense community that we need to improve the quality and experience of persons appointed to senior civilian defense positions. Senator Warner and I began this examination of the qualifications standards in an effort to strengthen the committee's contributions toward this objective, and I have talked to a number of you individually on this subject as we have gone along.

As part of our examination we have sought the views of committee members and received many useful suggestions. We have also sought the views of a number of outside experts including former Secretaries of Defense Melvin Laird, James Schlesinger, and Harold Brown.

On October 28, nearly 2 weeks before the November 8 election, we wrote to both Vice President Bush and Governor Dukakis to explain the qualification standards that Senator Warner and I are proposing to guide the committee's consideration of persons nominated by the President for civilian defense positions. We sent these letters prior to the election principally to avoid any suggestion of any kind of partisan motivation.

Although Senator Warner and I attempted to keep the committee informed of our work on this issue, the hectic pace of activity at the end of the session precluded a formal committee review of the proposed standards.

Therefore, we did not seek to represent the committee's views in the letters to Vice President Bush and Governor Dukakis. I believe we publicly have reflected the committee's views, but we did not speak for anyone but ourselves.

Senator Warner and I distributed copies of these letters to each committee member by correspondence dated November 14. However, given the importance of this initiative, we wanted to bring these proposed qualification standards to your attention during this meeting.

It is my view, in which I am sure Senator Warner concurs, that the committee should rigorously apply these high standards during the confirmation hearings. By drawing attention to these standards now, 2 months before the President's inauguration, we can hopefully ensure proper focus on these standards as key personnel decisions are made.

An important element of our procedures involves a review of FBI background investigations. Senator Warner and I worked on a joint statement on this subject, and I would like to read that statement at this time.

We also, of course, will give out a copy of the letter that I have referred to, although I am sure most of you read it, and I am not going to read it, but I would ask that it be part of the record. Without objection, it will be made a part of the record.

[The letters of Senator Nunn and Senator Warner follow:]

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, October 28, 1988.

Vice President GEORGE BUSH,
Old Executive Office Building, Washington, DC.

DEAR VICE PRESIDENT BUSH: We are writing to you and Governor Dukakis to explain qualifications standards that we are proposing to guide consideration by the members of the Committee on Armed Services of persons nominated by the next President for civilian positions in the Department of Defense. Our committee will then report to the Senate which will render its "advice and consent". This letter is being sent prior to the Presidential election for two reasons: principally, to avoid any suggestion of partisan motivation, but also to initiate an early cooperative dialogue. In this regard, the committee would appreciate receiving your views on the proposed standards.

As you know, strong defense leadership will be needed during the next four years to resolve serious strategy, budget, force structure, manpower, alliance, and arms control problems and issues. Central to meeting these challenges is the appointment of the highest quality and experienced defense management team. The President deserves the strongest possible team; we want to work with the next President to ensure that this capability is provided.

In this letter, we do not intend to identify specific qualifications for each civilian appointed position in the Department of Defense. However, there are general qualifications for all nominees which we deem important. In identifying and commenting on these qualifications, we do not intend to criticize any prior Administration. Our focus here is not the past, but the future.

In evaluating nominees, the Committee will be guided by the following general qualifications:

1. *Nominees must be of unquestionable integrity.* For a number of reasons, the American public has had increasing concerns about ethical standards in the Department of Defense. Maintaining public confidence in the integrity of defense management is absolutely essential.

2. *Nominees must be capable of performing as members of the Secretary of Defense's management team.* If the Secretary is to effectively carry out his vast responsibilities, he must receive the full cooperation and support of his senior subordinates. In this regard, the Secretary must have a central role in advising the President on the election of key civilian officials, in both the Office of the Secretary of Defense and the Military Departments. Section 113(f) of title 10, United States Code, already prescribes a key role for the Secretary by requiring him to inform the President of the qualifications needed by a person to serve in a specific civilian appointed position.

3. *Nominees should have a substantial understanding of national security policy and international security affairs.* The complexity of defense issues demands a high level of prior expertise. This standard need not apply to each civilian appointed position in the Department of Defense; but in the aggregate, the Secretary of Defense's management team must possess substantial expertise across the spectrum of national and international security issues.

4. *Nominees must demonstrate a commitment to emphasizing overall national security goals and objectives.* When appointees in the Department of Defense give undue priority to parochial defense perspectives, efforts to develop and execute an integrated and coherent defense program are greatly complicated, if not frustrated.

5. *Nominees must have substantial experience and expertise within their proposed areas of responsibility.* There is no time for "on-the-job" training in the Department of Defense. Nominees should be capable of immediately contributing to effective defense management and policy formulation.

6. *Nominees must be capable managers and administrators.* Each senior appointed position within the Department of Defense involves management responsibilities. Policy expertise must be complemented by forceful and effective leadership skills.

7. *Nominees must be suited by temperament for the demands of defense management.* Beyond working in a large and complex organization, appointees are confronted by perplexing problems, significant uncertainties, rapidly changing situations, and enormous time and work pressures. Nominees must be capable of coping with, and effectively performing in, this demanding environment.

8. *Nominees must have a strong commitment to public service.* It is imperative that nominees should have, and should be seen to have, the public interest as their only goal. Actions which call into question this commitment are unacceptable.

9. *Nominees must demonstrate an understanding of, and respect for, the Constitutional principles of the Nation, including the legitimate role of the Congress.* A bipar-

tisan, Executive-Legislative partnership on national security, with genuine cooperation between defense officials and the Congress, must be the goal of both Branches of Government.

As these qualifications standards indicate, the Committee will give increased attention to the potential contributions of an individual nominee to a defense management team. We trust you will share our view that a more comprehensive approach to the appointment of senior defense officials has merit.

Should you be elected President, the Committee will look forward to working with you to ensure effective leadership for the Nation's defense efforts. It is toward this end and in the spirit of partnership that this letter has been sent.

Sincerely,

SAM NUNN,
Chairman.
JOHN W. WARNER,
Ranking Minority Member.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, October 28, 1988.

Governor MICHAEL S. DUKAKIS,
Boston, MA.

DEAR GOVERNOR DUKAKIS: We are writing to you and Vice President Bush to explain qualifications standards that we are proposing to guide consideration by the members of the Committee on Armed Services of persons nominated by the next President for civilian positions in the Department of Defense. Our committee will then report to the Senate which will render its "advice and consent". This letter is being sent prior to the Presidential election for two reasons: principally, to avoid any suggestion of partisan motivation, but also to initiate an early cooperative dialogue. In this regard, the Committee would appreciate receiving your views of the proposed standards.

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Should you be elected President, the Committee will look forward to working with you to ensure effective leadership for the Nation's defense efforts. It is toward this end and in the spirit of partnership that this letter has been sent.

Sincerely,

SAM NUNN,
Chairman.
JOHN W. WARNER,
Ranking Minority Member.

Senator NUNN. This is a statement we are making, a joint statement that Senator Warner and I have worked very carefully on relating to our procedures regarding FBI reports.

As we prepare to handle the large number of nominations that will be submitted by the new administration, we would like to remind you of the procedures we have instituted in handling the nomination confirmation process before the committee. You will recall that there were a number of press reports this past summer concerning alleged wrongdoing by Mr. Melvyn Paisley and concerning whether certain matters were brought to the attention of this committee during Mr. Paisley's confirmation as Assistant Secretary of the Navy in 1981. As part of a review of these issues, I wrote, in my capacity as committee chairman, to the counsel to the President on July 28, 1988, asking that the committee be provided with such information as was contained in the FBI background investigation of Mr. Paisley prior to his confirmation in November 1981. We undertook this review for the purpose of assessing the adequacy of our procedures for reviewing the background and qualifications of nominees.

The counsel to the President agreed to provide Senator Warner and myself with access to the FBI's 1981 report of its background investigation. Senator Warner and I both reviewed that file in October.

There are serious allegations in the FBI file, which, if true, would have raised questions about Mr. Paisley's suitability for the position for which he was nominated. We want to emphasize that these were only allegations and that the file did not contain substantiation. However, it is clear that the White House in 1981

should have requested further investigation to help clear up these allegations. As best as we can tell, that was not done. With respect to this committee, there is no information in the records of the Armed Services Committee to indicate whether this FBI report was either reviewed by the then leadership of the committee or, if reviewed, whether it prompted any further investigation of the allegations.

We must emphasize that the material in the file to which we are referring consists only of allegations, not proven facts. We cannot speculate as to whether any further investigation might have revealed information that would have changed the committee's action on Mr. Paisley's nomination. However, suffice it to say that if the information in the file had been brought to the attention of Senator Warner or me, we would not have been prepared to act on the nomination without further investigation and additional information.

But more importantly, our review of this file reconfirms the importance of the revisions we have made in our committee's nomination process during the last 2 years. These include: (1) developing and implementing written procedures for handling nominations to ensure a thorough and consistent review; (2) requiring each nominee to fill out a detailed questionnaire designed to ensure thoroughness as well as consistency in obtaining information relating to the nominee's qualifications and potential conflicts of interests; (3) requiring the general counsel of the agency concerned to submit a letter certifying that the nominee does not have a conflict of interest, or an appearance of a conflict of interest, with respect to the position for which he or she has been nominated; (4) obtaining a letter from the counsel to the President describing the nature and scope of the FBI's investigation of the nominee; and (5) ensuring that the chairman and ranking member, or a member of the committee designated by them, review the summary of the FBI file on each nominee.

These procedures ensure that, with respect to every civilian nomination before this committee, the FBI files are reviewed and we have received a complete report from the White House on the scope of the background investigation. These procedures have enabled us to follow up and resolve a number of problems that have arisen during the confirmation process.

We have directed the staff to review our past experiences and our current procedures and to recommend such changes as may be necessary to fulfill our role in the confirmation process. We welcome the suggestions of the members of the committee as we proceed to further strengthen these procedures.

That is the end of the joint statement.

As suggested by both of the subjects I have addressed, the FBI investigation qualification standards, the committee will give increased attention to its role in the confirmation process during the 101st Congress. Senator Warner and I hope that the committee will share our views on the need for the appointment of a defense management team of the highest quality, experience, and integrity and for the committee to take a rigorous and fair approach to its role in the confirmation process.

Senator Warner.

Senator WARNER. Thank you, Mr. Chairman.

First, I would like to say that, although it is clearly incorporated in our joint statement, nothing by way of the examination that you and I performed is to reflect one way or another on any proceedings now under the cognizance of the Department of Justice with respect to allegations of fraud in the Department of Defense that presently is before a grand jury, and in my judgment, I think what we have done by way of our examination of this file or will do in this hearing this morning should not in any way reflect on those proceedings.

Senator NUNN. I agree with that.

Senator WARNER. Second, we want to be very careful that the statement is not to be construed as to reflect in any way upon the prior leadership of this committee. To the extent I've been able to determine, the leadership for the past several decades followed a procedure that was the standard up until such time as you and I were given the responsibility.

Now, we have elected to, I think, do certain things in a different manner, and in my judgment it is a wise course of action, and I support it. But, again, as you know, one of our former members is under consideration at this time by the Vice President for purposes of a cabinet post, and in no way is the statement by us to reflect on his management of this committee at the time he was chairman of it.

And, last, I want to make certain that our procedures, particularly with reference to the FBI file in no way erode the ability of the FBI to conduct not only investigations for this committee, but investigations to assist the President in his judgment on other appointees.

I think the chairman and I certainly to this point have agreed firmly that we, the two of us, will be solely responsible unless under certain circumstances we feel we wish to designate another member of this committee to look at the file at our specific behest. But we must be very careful not in any way to erode the ability of the FBI to perform its duty for this President and future Presidents. Thank you, Mr. Chairman.

Senator NUNN. Thank you very much, Senator Warner. I think we learn from experience, and over the years being a member of this committee, I have learned certain things, basic assumptions we may make that are not always correct.

For example, there are several different kinds of FBI reports. Usually when we use the words "FBI report" we think that is what we consider a full field investigation. It means going out and interviewing all sorts of people, neighbors and so forth. That is not what we get in many cases.

There is another FBI report that is called national agency check, and that means you do not interview anybody. You simply ask the agencies to look in their files and send anything they may have on a particular individual.

There is another more limited FBI procedure that is an investigative agency check. I am not trying to use terms of art here. The investigative agency check is different from the national agency check. It's simply a check with the investigative agencies of various executive departments.

So, we are requiring the White House counsel when they send a nomination down to tell us what kind of FBI report has been done, make it clear, and in some cases we will be asking for full field investigations and in others we will not.

Sometimes people have had a full field investigation 2 or 3 years previously and we do not always think it is necessary to repeat that. So, there are all sorts of things we learn as we go along in this process, and I think Senator Warner has stated it well.

In terms of the historical context, we have a number of new procedures that we did not have before 1987, and the reason we have those is because we have learned over the years things we should do to fulfill our constitutional role.

We hope not to go beyond this statement. We have worked on it very carefully. It is a statement available to the public.

It is a very sensitive question about how you handle FBI reports, and we want to comply with our responsibilities in that respect. And we also have been very careful, as Senator Warner said, to make sure that nothing we did in either reviewing that file or in making this general observation about the file in any way infringes on any kind of judicial matter that may or may not come into fruition.

Senator Exon and Senator Levin.

Senator EXON. Mr. Chairman, I think that you and Senator Warner have done a great service to the committee for the statements you have just made. As I listened to it and have looked over it, I think it merely says that we are going to pay more attention and ask for more detailed information in the future.

Senator NUNN. It takes lawyers more words to say that, but you have done it very well.

Senator EXON. I think that is a step in the right direction. I have looked at several FBI reports over the years in this committee and other committees. I have been assigned that job by the chairman, and I suspect that will come about again in the future.

There is not a whole lot, frankly, that a committee can do, it seems to me, and I think we have done a better job in looking into these things in detail in this committee than in others. But it has been seldom that I have ever reviewed an FBI report that there was not something in there that hindsight would have said you should have recognized.

I suspect that that was the case with Paisley. I didn't see Paisley's FBI file, but I can imagine about what it said from my experience in many years going back to when I used to have to look at them from time to time as Governor of Nebraska.

You said it well, Mr. Chairman. Some of them are catchalls. They are not investigations. They are rumor mills and rumor mongers that can besmirch anyone's reputation in public office.

I think we have an extremely difficult job to do in approving these people, but during the confirmation process it has always been my view, and maybe I am wrong, that we should basically approve those people that the President recommends to us.

We have to assume that the major part of the investigation is done down at 1600 Pennsylvania Avenue, and I do not think it is any detriment toward the committee or should we not look down at this committee's activities with regard to Paisley because I suppose

and suspect that if we have another Paisley that is presented to us at some time in the future, I doubt that the FBI report is going to give us the information that we would need to catch it. You know such things are not going to be highlighted.

I think you have done the right thing. It is a difficult position we are put into, but I certainly have no quarrel or question with the chairman or the ranking member on what they have done in the past. I think you have handled it very well.

Senator NUNN. Thank you very much, Senator Exon.

Senator THURMOND. Mr. Chairman, will Senator Levin yield 10 seconds to me? I have got to leave.

Senator LEVIN. Sure.

Senator THURMOND. Mr. Chairman, I just want to commend you and Senator Warner on this evaluation and guidelines as I construe that is what it is that you have gotten up. You wrote both candidates for President. I think it is very impressive, and I think it is important. I think it will help get results.

Senator NUNN. Thank you very much, Senator Thurmond. I believe Senator Levin yielded and then Senator Gramm.

Senator THURMOND. Thank you very much, Senator Levin.

Senator LEVIN. Sure, Strom.

First of all, Mr. Chairman, to you and Senator Warner, I think we are all indebted for what you have done.

As you both know, I was deeply troubled by the allegations which we read about relative to Paisley and Operation Ill Wind. One of the things that bothered me most was the question of our own confirmation of Mr. Paisley and what did our confirmation file disclose.

And I went back and read that confirmation file, and it disclosed nothing relative to these allegations, at which point I asked the White House whether or not I could see the White House FBI file on Paisley, and I was refused because they decided to make that accessible only to the chairman and the ranking member. I accepted that. I think that that was a reasonable solution.

I just have a couple questions, though, that I want to press you on if I can.

First of all, in your statement you say that you have been given access to the FBI 1981 report. The question is, is that the FBI report that is in the White House file? Is that the one you are making reference to?

Senator NUNN. That is what we asked for, and that is my understanding. That is what we got. That is my understandig that is what we reviewed.

Senator LEVIN. Relative to our confirmation process, it seems to me the critical issue is whether or not the White House informed our leadership at that time of these allegations or whether or not they did not disclose them to us.

Senator NUNN. Senator Levin, we have looked at that very carefully. We have looked through the written files. We have nothing in our files that indicate that we were notified of this. We have nothing in the files that would indicate that the FBI file was itself reviewed by any member of this committee. But, neither do we have anything in the file that says that that was not done. So, we have an absence of clarity on that point. I think we have done

some talking to various members and staff and so forth, and we simply cannot answer that question.

Senator LEVIN. My question is slightly different, I guess. And that is whether or not the White House files or records disclose that they informed us or withheld from us this information.

Senator NUNN. I have asked that question. We have received the answer. There is nothing in the White House files that indicate what they did or did not give to this committee.

Senator WARNER. But, Mr. Chairman, those inquiries, again, bear out that the procedure followed in connection with Paisley and the procedure followed by this committee with reference to other nominees in that timeframe was consistent with the procedures followed by the leadership of this committee for some, I think, decades or more prior thereto. So, there was a pattern that had been followed by this committee for many, many years.

Senator LEVIN. Would that pattern include the referral to us of either a summary of those allegations——

Senator WARNER. So far as I know, Senator, this committee really did not avail itself of whatever opportunity may have been present to seek FBI files in connection with this nomination.

Senator LEVIN. I'm just wondering, would the pattern have been to summarize for us what those allegations were?

Senator WARNER. Upon request, as far as I can determine.

Senator LEVIN. How would there be a request unless we were informed of something?

Senator WARNER. I just suppose as we say sua sponte by the chairman or the ranking of the committee.

Senator NUNN. There have been no written procedures for confirmation in the committee. We have now written procedures, so it is awfully hard to go back and say what happened in 1980–81.

It is awfully hard to go back and say what happened in 1975, 1976, 1978. It is just extremely difficult. You do it only by word of mouth, and I would imagine you would find some variations under Senator Stennis and Senator Russell. I frankly do not know what procedures they used.

We have probably a better recollection because most of us were on the committee from 1980 on. It is almost impossible to say, but we have not had a uniform written procedure in this committee.

Senator LEVIN. So, basically no one in the White House knows whether or not they gave these allegations or summaries of them to the Armed Services Committee.

Senator NUNN. Well, we have dealt with Mr. Culvahouse. Mr. Culvahouse's statement to me has been they do not have a record that indicates it or otherwise. No.

I think he clearly implied to me that they did not know.

Senator LEVIN. Thanks again.

Senator WARNER. Mr. Chairman, could I just make an observation at this point.

I think if we are deferring to me, when I embarked on this joint effort with the chairman, it was clearly with the purpose in mind to try and work with the President in a very constructive effort fulfilling our constitutional role to endeavor to build a more public confidence in the Department of Defense and the various procedures by which the senior executives are put in those positions. So,

I hope that our membership and others who take an interest in what we are doing today will look upon this as a joint effort, a positive effort to work with the President to further strengthen the public confidence in the Department of Defense at a very critical time.

Senator NUNN. I agree with that completely.

Another interesting thing is, I think at this stage it would be safe to say, although the White House would have to speak for themselves on this, that as a result of all of this when FBI files are checked and read by, say the ranking member and chairman, there is now a record, I am sure, going with that file as to who has had access to it.

Senator DIXON. Could I just ask a question about that, Mr. Chairman?

Senator LEVIN. Could I just conclude with one final point?

I agree these new procedures are going to avoid this, hopefully. That is a big plus. Just to wrap this one up, though, does either Senator Tower, Stennis or their staffs recollect whether or not that material was forwarded to us?

Senator NUNN. I have no information from any of those sources that anyone recalls one way or the other.

Senator LEVIN. Have they been asked?

Senator NUNN. Yes, but I would rather for them to speak for themselves on it, the subject. I do not want to purport to speak for any one of them right now. I do not have any information.

We have inquired, and I do not find anybody that can say what happened one way or the other.

Senator LEVIN. Thanks again.

Senator NUNN. Senator Gramm.

Senator GRAMM. I have never seen an FBI file, but I have had one experience with it that leads me to believe that we ought to have the same people on the committee review all the files so that they are accustomed to what is in the files.

I have had one experience that I would like to share, Mr. Chairman, with the committee. I had a friend that I went to high school with, from another State who was considered for a major appointment in the Reagan administration. There was an FBI check on him. He was very close to having the appointment, and then for some reason he did not get the appointment.

A couple of years later under the Freedom of Information Act he asked for his FBI file which was given to him with a lot of entries removed. To make a long story short, he did not get the appointment because of a last-minute—as best he can figure it—allegation by his second wife that he had had dealings with underworld figures.

In trying to get more information about what the FBI was doing, I talked about it with the head of the FBI. I told him, if you were going to give this file to the administration and it had this allegation in there, why did you not check the allegation out?

His response was that when you are doing these background checks, they are doing them with the White House as their client. They are not investigating people for any criminal dealings. And so it is really up to the White House to say whether they want specific information checked in greater detail.

As it turns out, the guy sold real estate to a guy who 8 years later was indicted for some kind of underworld dealings, and checking it out would have cleared him and he probably would have gotten the appointment.

So, the point I am making is I think not only do we need to have the same Democrat and Republican review the files, but I think it would be important for them to have somebody from the FBI brief them on the inherent limitations of these background checks and what they are and what they are not trying to do.

As I said, I have never seen an FBI file, but this one case of an individual that I know about was enough to convince me that you are dealing with an investigation that has a lot of inherent limitations. You need some consistency in the people reviewing these files. They need to understand the limitations.

Senator NUNN. Senator Gramm, you are 100 percent correct. I have gone into this at great length with the FBI in the last 2 years, and I have learned a great deal in doing that, and on a lot of these things, it is just a smorgasbord of what they put down in talking to people. It includes rumors. It does not even require any further check at all. It is up to the White House counsel, people in the administration, to say go back and check this point.

But, the reason we have to see these files is sometimes there is a real failure on the part of the executive branch to do that. So, we have to see them.

We have done it on a number of occasions. We have had things like you talked about in a file, and we have said in the last 2 years that we want you to go back and check this, and they have cleared it up. There ends up not being anything to it at all.

So, you do have to understand the very limited nature of this type of investigation. It is not like a criminal investigation. They are not trying to come to conclusions. They are simply reporting on the surface kind of peripheral examinations.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman. Just briefly, since the subject of Mr. Paisley has come up quite a bit in this new procedure. I would first like to say that I applaud the procedure and I think it is a very important one. I hope that we will prevent any repetition of what has happened in the past.

I think it is important to remember that in 1981 there was a new administration. There were literally hundreds of new appointments throughout the Department of Defense.

I think it is important to recognize that at that time, at least, the position to which Mr. Paisley was appointed was not viewed as a top-level appointment.

So, it is not astonishing to me with a new administration and a new party taking over the committee that there should be some difficulty in ascertaining exactly who knew what and what information was given to whom.

If that appointment had been made in 1982 or 1983, I think there would have been a much larger question as to what procedures were being followed. But, as I previously stated, in 1981 there were literally hundreds of appointments being made within the Department of Defense that fell under the oversight of this committee. I think it is understandable there was some confusion.

Senator NUNN. I think that is right, and also I would like to say that the FBI in a new administration gets so far behind in these background checks that they almost cannot do it, and particularly the field investigations. An agency check does not take very long, but a field investigation takes literally a lot of man-hours out there.

I had one experience in a previous administration where I walked out of the U.S. Senate—this was in early 1977—having just voted on the confirmation of an individual at a pretty high level. And, as I was leaving the elevator, a fellow said, "Can I talk to you a minute? I am with the FBI. I am checking on so and so."

I said, "Well, friend, he has just been confirmed." So, that is the way it goes in a new administration.

Senator Kennedy.

Senator KENNEDY. I also want to commend both of you for the work that has been done in this area over the period of these last 8 years.

We have worked in the Judiciary Committee both under Chairman Thurmond and Senator Biden reviewing FBI files for a variety of different nominees, and the procedures that have been established and accepted by both sides have worked exceedingly well for that committee.

I think that the way the FBI reports have been handled also gives the members of the committee some very important insights while being fair to the particular nominee. So I might just refer these procedures to the Chair and Vice Chair for whatever help they may provide.

Senator NUNN. Thank you. Senator Warner.

Senator WARNER. Mr. Chairman, if there is no further discussion of this subject, I think it would be proper if we adjourn this meeting in recognition of services to this committee for several years by Carl Smith. This will be the last meeting that he will attend in the capacity as a chief of staff.

Senator NUNN. I agree. Carl, we have enjoyed having you very much. You have been a vital part of this committee, and we wish you well. I had not received that word until just now. Where is Carl?

Mr. SMITH. Right here.

Senator NUNN. Let's give him a round of applause. [Applause.]

Senator WARNER. Mr. Chairman and members of the committee, Senator Nunn and I have a little matter relating to aircraft carriers. I can see everybody leaving. Senator Nunn?

Senator LEVIN. You just brought us back here, John.

Senator NUNN. I would be glad to respond to any questions my colleague from Virginia might have about previous statements I have made on that subject.

Senator WARNER. I would be happy to hear them. Of course, it is based on the conversation privately that the two of us had last night.

Senator NUNN. Let me just make a couple of points here. And anybody can stay that wants to and anybody can leave who wants to. But we are still in session here.

I was on the program "Face the Nation" the other day, and I was cut off in mid-sentence as I was beginning to discuss the need

to make some cancellations of hardware programs because of defense budget problems. My sentence wasn't complete and some people may have associated it with the preceding discussion about two aircraft carriers, leading some to the conclusion that I was specifically and dogmatically proposing the cancellation of two carriers funded in fiscal year 1988.

Had I been permitted to complete my total statement about the need for cancellations, I would have spoken more broadly about the comprehensive review of all weapons systems including, but not limited to, aircraft carriers that should be undertaken as we seek a meaningful long-term solution to the defense budget crisis.

We all know that the 5-year defense plan will have to be reduced by some $400 billion in order to come in line with the zero real growth in defense spending which President-elect Bush has proposed over the next 5 years. That is a massive fiscal adjustment. It is going to require reexamination of every acquisition program.

Some programs may need to be canceled. Other new starts may need to be delayed, and I hope we can delay them before they go into production because once production starts, it is very inefficient to delay or to stretch out at that stage. Some systems now being procured may have to be increased to more efficient procurement rates.

I want to make it clear that the two new aircraft carriers, in my view, should be included in this review. But, they are not the only systems, and I in no way meant to imply that it may be, and Senator Warner has pointed this out to me, and I am going to be studying the information he has given me.

It may well be that our contractual obligations, our force needs, or the cost-effectiveness arguments are so great that we will need to continue the new aircraft carrier construction, and I am looking at that information.

It also may be that we need to take a look at—and Senator Warner and I have discussed this in the past—possibly instead of in any way impeding the present construction of those carriers that we see how we can save money in less force deployments or perhaps earlier phasing out of older carriers so that we save an awful lot of operating expenses. That may be a better solution.

But, the point is I think we are going to have to have a review of all the hardware programs including those that have already been started. I think my record is clear that I did not think when we funded those two carriers we could afford it at the time. I think Senator Kennedy and I have talked about this, and he has gone into it in some depth.

We have talked about trying to save some additional money in terms of early phase out of carriers. So, all these things are under review, and I think the main thing is we want to do whatever budget pruning we have to do in a logical fashion.

I believe that the new national security adviser, Mr. Scowcroft, is precisely correct when he says we need to start with a strategy, and the question of strategy includes Europe, includes Northeast Asia, includes the Persian Gulf, our relationship with our allies, and also the questions of just how many carriers we need, where they need to be, whether we need 1½ or 2 in the Mediterranean,

how many we need in the Pacific. So, all of those things come into play.

And, Senator Warner, I know there has been some confusion on this, and I certainly welcome any——

Senator WARNER. Mr. Chairman, thank you. I hope this clarifies at least the fact that you and I have a clear understanding that we can share facts with one another on this issue.

I did bring to your attention last night the following:

That the contract for the actual construction of these ships has been signed. Over $4.3 billion has been obligated for construction of the two carriers, and the shipyard has begun working with the subcontractors.

Another $1.2 billion has been obligated for equipment which the Government will furnish to the construction yard, including the carriers. Now, if you add that up, that is $5.3 billion against the total appropriation of $6.325 billion.

So, as you see——

Senator NUNN. Has that been expended?

Senator WARNER. That is obligation.

Senator NUNN. How much has been expended so far?

Senator WARNER. A considerable amount has been expended. I assure you, we would have the most monumental pile of waste in the history of the Pentagon if we were to cancel these two ships at this juncture.

Therefore, I feel that while you and I may have had differences some 2 years ago, the action by the Congress now and the subsequent actions by the contractor and others are such that I think the decision is irretrievable.

Then if you superimpose on that the procedure, a new President would have to come in and seek the cancellation working with the Congress. The Congress would have to act on it, and then it would be subject to veto. And I am confident that President-elect Bush would exercise the veto because I have discussed specifically these carriers with him, and I know his commitment to the two ships.

Quite apart from all the fiscal considerations, I think the controlling consideration is the one you point out. If the U.S. Navy is to fulfill its missions as presently outlined, and as I envision they will be outlined under any scenario of consideration of our strategy, these two carriers are absolutely essential.

So, I thank the Chair for its cooperation.

Senator NUNN. I thank the Senator from Virginia.

Senator Kennedy.

Senator KENNEDY. We visited this issue during the last session, and I am sure we are going to visit it during the current session. I think the early retirement possibilities that Senators Nunn, Levin, and I raised last year offer some very important savings, particularly as we look to the out years.

As I understand it, even though the obligation has been made, the outlays to date, according to the Navy's own figures, are less than $100 million. This leaves over $6 billion in outlays yet to be provided. Thus, although the contracts for the new carriers may have been signed; we still have not paid the bulk of the costs.

Senator WARNER. Does that include cancellation?

Senator KENNEDY. We are just talking about the outlays. I cannot speak knowledgeably about what any of the cancellation costs are. I just want to focus on the issue that was really raised in the last session which was the early retirement of one of the carriers which provides, according to the CBO, approximately $500 million per year in savings. This substantial savings could be used to offset some of the outlays necessary to pay for the two new carriers.

We do not want to debate that issue now. But I did want to say that I would hope that we would have the opportunity to consider that particular issue as well as the other matters which you have mentioned.

Senator NUNN. My point I was trying to make was that I think we are going to have to revisit a lot of things. And when I made that statement on cancellations, if you look at the transcript very carefully—and Senator Warner and I talked about this last night—it was apparent that I was about to broaden the statement, but I did get interrupted at that point.

I do think all of these things have got to be under review, but we have got to do it very logically. And when you have sunk so much money in, you have got contractual obligations and penalties and all that, you have got to take that into account.

Senator WARNER. I thank the Chair and I thank the members of the committee.

Senator NUNN. Thank you, Senator.

[Whereupon, at 10:11 a.m., the committee was adjourned, subject to the call of the Chair.]

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